

Exhibit 18

(Filed Under Seal)

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 DISTRICT OF MINNESOTA
4

5 C.A. No. 16-cv-1054 (WMW/DTS)

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7 FAIR ISAAC CORPORATION,)

8 Plaintiff)

9 v.)

1 0 FEDERAL INSURANCE COMPANY AND ACE)

1 1 AMERICAN INSURANCE COMPANY,)

1 2 Defendants)

1 3 -----

1 4 CONFIDENTIAL TRANSCRIPT

1 5 ATTORNEYS' EYES ONLY

1 6

1 7 DEPOSITION OF MICHAEL SAWYER

1 8 October 2, 2018

1 9 Courtyard Marriott

2 0 35 Foxborough Boulevard

2 1 Foxborough, Massachusetts

2 2

2 3 *****

2 4 Court Reporter: Amie D. Rumbo

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1 9 ALSO PRESENT:

2 0 James Woodward, Vice President, Legal, Fair Isaac

2 1 Corporation

2 2

2 3 Kevin Murphy, Senior Counsel Global Legal for

2 4 Chubb

1 I used. But the premise of the conversation was
2 that, you know, upon my reading of the amendment
3 two and the language around territory in the
4 software license agreement that, you know, a broad
5 interpretation of ELA beyond the United States, I
6 felt was an incorrect interpretation of the
7 contract based on the language that I read.
8 Q. And did you talk at all about your
9 interpretation compared with the actual use by
10 Chubb?
11 A. I can't be certain, but logically,
12 I would not bring up that point to Russ if there
13 was not something that, you know, generated a
14 thought around the use of the software outside of
15 the territory and the country.
16 Q. Okay.
17 A. Whether that use is, you know,
18 existing or, you know, potential future use, I
19 couldn't be certain.
20 MR. FLEMING: Mark this as
21 Exhibit 74.
22 (Exhibit 74 marked for identification.)
23 Q. Mr. Sawyer, is this an e-mail from
24 you to Henry Mirolyuz dated July 22nd, 2009?

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1 A. Yes. Exhibit 74 represents an
2 e-mail that I sent to Henry Mirolyuz in July
3 of 2009.
4 Q. And do you recall sending this
5 e-mail to him?
6 A. No, I do not.
7 Q. In that e-mail, you attach a Blaze
8 case study with Aviva in the United Kingdom and
9 you say, quote, "That might serve as a good source
10 of information as you try and promote the use of
11 Blaze in the Europe," unquote. Do you see that?
12 A. I do, yes.
13 Q. Do you recall providing Henry
14 Mirolyuz with this Blaze case study?
15 A. No, I do not.
16 Q. Would you agree that in this e-mail
17 you are attempting to assist Henry Mirolyuz in
18 promoting the use of Blaze in Europe?
19 A. Yes.
20 Q. Okay. So it would be fair to say,
21 at least at this time, which is prior to the time
22 you became a client partner, that you did not
23 believe that the use of Blaze in Europe would be
24 in violation of the software agreement?

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1 A. That is not a correct statement.
2 Q. Okay.
3 A. As a representative of FICO, my
4 role would have been to help support and promote
5 sales of product. So if the use of Blaze in
6 Europe represented a new sales opportunity for
7 FICO, I would have helped Henry promote that as
8 well. So I do not agree with your statement that
9 this definitively says that I agreed that their
10 existing licensing agreement included Europe.
11 Q. So in the ordinary course, when
12 would you have had a discussion with Henry
13 Mirolyuz about the scope of the software license,
14 if, at that time, you believed that the license
15 would not allow use of Blaze in Europe?
16 A. At this point in time, it would not
17 be my responsibility to have that conversation.
18 As you see on this e-mail, Ian Brodie is copied.
19 Ian is the client partner at that time. I would
20 have been supporting Ian in this effort with
21 Henry, and it's likely that, you know, based on a
22 conversation that Ian had with Henry that Ian
23 requested that I pull this relevant case study and
24 send it over to Henry. So as it relates to this

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1 specific e-mail, it would not have been in my
2 scope of responsibility.
3 MR. FLEMING: Mark this as Exhibit
4 75.
5 (Exhibit 75 marked for identification.)
6 Q. Mr. Sawyer, is this an e-mail from
7 Tom Bradley to Ian Brodie that you and others were
8 copied on concerning Chubb insurance follow-up?
9 A. Yes. That appears to be correct.
10 Q. Okay. And there's an e-mail chain,
11 and the e-mail below is an e-mail from Ian Brodie
12 to Tom Bradley copying you and the same people on
13 the same subject; is that right?
14 A. Yes, that appears correct.
15 Q. Do you recall the substance of this
16 e-mail?
17 A. I do not. I have it in front of
18 me. I can read it, but I do not recall a -- this
19 e-mail to Tom Bradley. In fact, I couldn't even
20 recall Tom Bradley as a CFO of FICO, so no.
21 Q. You discussed earlier in your
22 testimony the premium validation application.
23 What was that project? Could you explain it?
24 A. Yes. So the premium validation

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<p>1 project was in Chubb's corporate business systems</p> <p>2 unit based in Warren, New Jersey where they had a</p> <p>3 COBOL system in place, which I believe was called</p> <p>4 PARSE, and Chubb was having resource constraints</p> <p>5 finding qualified COBOL developers to maintain the</p> <p>6 large volume of premium data validation rules in</p> <p>7 that system, and they were looking for</p> <p>8 alternatives for technologies to support that</p> <p>9 validation edits and, ultimately, Chubb selected</p> <p>10 to utilize FICO's Blaze Advisor for that project.</p> <p>11 Q. Do you see in the second paragraph</p> <p>12 where -- in the second paragraph of the e-mail</p> <p>13 below where Mr. Brodie says, quote, "Chubb already</p> <p>14 has an enterprise license for Blaze. This is the</p> <p>15 professional services proposal to assist them with</p> <p>16 the design and development of that application,"</p> <p>17 unquote.</p> <p>18 What do you understand that Mr.</p> <p>19 Brodie meant by that?</p> <p>20 A. If you give me a minute to read the</p> <p>21 e-mail.</p> <p>22 MR. HINDERAKER: And I'll object to</p> <p>23 the extent it's asking for Mr. Brodie's</p> <p>24 intentions or subject of intentions.</p> <p style="text-align: right;">Page 61</p>	<p>1 one reflected in this e-mail?</p> <p>2 A. Professional services fees as</p> <p>3 reflected in this e-mail and other projects of</p> <p>4 similar nature as well as software maintenance and</p> <p>5 support.</p> <p>6 Q. All right.</p> <p>7 MR. FLEMING: Mark this as Exhibit</p> <p>8 76.</p> <p>9 (Exhibit 76 marked for identification.)</p> <p>10 Q. Let me know when you've had a</p> <p>11 chance to look through it.</p> <p>12 A. Okay.</p> <p>13 Q. Let's look first at the e-mail at</p> <p>14 the bottom of page 1. That is an e-mail from</p> <p>15 Russel Schreiber to you and others dated</p> <p>16 March 28th, 2012; is that right?</p> <p>17 A. That is correct.</p> <p>18 Q. And at that time, you were a client</p> <p>19 partner at FICO?</p> <p>20 A. That is correct.</p> <p>21 Q. And he's asking with regard to the</p> <p>22 third and fourth quarters, what's the pipeline,</p> <p>23 what are the commit deals, what's the forecast.</p> <p>24 What is he talking about?</p> <p style="text-align: right;">Page 63</p>
<p>1 A. Okay. Based on the e-mail, it</p> <p>2 suggests that the intended use of the Blaze</p> <p>3 Advisor software for the PARSE project in Warren,</p> <p>4 New Jersey would fall within the scope of the</p> <p>5 existing Chubb licensing agreement, and therefore,</p> <p>6 the commercial proposal that we had put in place</p> <p>7 for that project that Ian was seeking executive</p> <p>8 level approval for was strictly professional</p> <p>9 services.</p> <p>10 Q. So then in the third paragraph it</p> <p>11 talks about the size of this engagement as being</p> <p>12 approximately a million dollars over the next 12</p> <p>13 to 15 months; is that right?</p> <p>14 A. That is correct. That is stated</p> <p>15 here.</p> <p>16 Q. So you talked earlier in your</p> <p>17 testimony about the various sources of revenue</p> <p>18 generated by FICO. With regard to Chubb as a</p> <p>19 client, during the time that you were a client</p> <p>20 partner, were any fees generated via sales of</p> <p>21 licenses to Chubb?</p> <p>22 A. Not that I'm aware of, no.</p> <p>23 Q. All the revenue that were generated</p> <p>24 related to professional services fees such as the</p> <p style="text-align: right;">Page 62</p>	<p>1 A. So he's asking for what is your</p> <p>2 total pipeline as a salesperson of potential sales</p> <p>3 opportunities across your territory. What are the</p> <p>4 commit deals, what deals are you committing as a</p> <p>5 salesperson that you will close in the quarter.</p> <p>6 And based on that, what is your booking and</p> <p>7 revenue forecast associated with your territories</p> <p>8 for the two quarters.</p> <p>9 Q. So he's asking about deals or</p> <p>10 projects that are already in the door and new</p> <p>11 deals?</p> <p>12 A. No. This would all be prospective</p> <p>13 deals.</p> <p>14 Q. I see.</p> <p>15 And you respond at the top of the</p> <p>16 page the next day stating "I've cleaned up SF this</p> <p>17 morning." Is that Salesforce?</p> <p>18 A. That is.</p> <p>19 Q. And is that a software application?</p> <p>20 A. Salesforce is -- at the time, was</p> <p>21 FICO's CRM system and used for their sales force</p> <p>22 to manage pipelines.</p> <p>23 Q. And you reference "the attached</p> <p>24 report to show deals by quarter with the</p> <p style="text-align: right;">Page 64</p>

<p>1 2015, it would be impossible to make the assertion</p> <p>2 that Chubb has violated the license agreement.</p> <p>3 The transaction had not occurred yet.</p> <p>4 So our concern was that the</p> <p>5 proposed transaction may impact that provision and</p> <p>6 wanted to engage the client in dialogue to get a</p> <p>7 better understanding of the process that they were</p> <p>8 going through around the acquisition and whether</p> <p>9 or not they felt like this provision in their</p> <p>10 contract was going to be impacted by the proposed</p> <p>11 transaction.</p> <p>12 Q. All right. All right. Showing you</p> <p>13 what's been marked as Exhibit 79.</p> <p>14 (Exhibit 79 marked for identification.)</p> <p>15 Q. Do you recognize these e-mails?</p> <p>16 A. Yes. Upon seeing it, I can recall</p> <p>17 these messages.</p> <p>18 Q. Looking at the bottom of the page,</p> <p>19 it looks like it's an e-mail from Lamont Boyd to</p> <p>20 Russ Schreiber. Who is Lamont Boyd?</p> <p>21 A. Lamont Boyd is a director or senior</p> <p>22 director in FICO's scoring business unit.</p> <p>23 Q. Was this -- you were copied. Russ</p> <p>24 Schreiber forwarded this e-mail to you. Was this</p> <p>Page 117</p>	<p>1 relationships with, you know, decision makers at</p> <p>2 Chubb may -- we may lose some relationships</p> <p>3 because ACE being the acquirer, may, you know,</p> <p>4 take a stronger role in deciding future direction</p> <p>5 of the company, and Chubb was a significantly more</p> <p>6 significant client than ACE was for FICO at the</p> <p>7 time.</p> <p>8 MR. FLEMING: Mark this as</p> <p>9 Exhibit 80.</p> <p>10 (Exhibit 80 marked for identification.)</p> <p>11 Q. So do you recall this e-mail chain</p> <p>12 which begins with an e-mail from you dated</p> <p>13 October 7th to Russ Schreiber and ends with a --</p> <p>14 that's dated October 7th, 2015, and ends with an</p> <p>15 e-mail from you to Russ Schreiber dated later that</p> <p>16 same day?</p> <p>17 A. I don't recall this e-mail</p> <p>18 exchange, but I don't contest it's accuracy.</p> <p>19 Q. Okay. Let's look at the first</p> <p>20 e-mail, which is on the third page, Bates stamped</p> <p>21 number FICO 1700 and that's an e-mail from you to</p> <p>22 Russ Schreiber dated October 7th, 2015, and you</p> <p>23 say, quote, "I think we're in a good spot. See</p> <p>24 below. The first excerpt is from the original</p> <p>Page 119</p>
<p>1 the first that you had heard about the ACE merger?</p> <p>2 A. Proposed merger, yes, I believe so.</p> <p>3 Q. What was your understanding of what</p> <p>4 Lamont Boyd meant by, quote, "This could be</p> <p>5 another backdoor win for FICO, CBIS"?</p> <p>6 A. CBIS relates to a FICO product</p> <p>7 called Credit Based Insurance Scores, which are</p> <p>8 leveraged by a significant number of personal</p> <p>9 lines insurance carriers to assess the risk posed</p> <p>10 by an applicant for insurance. What Lamont is</p> <p>11 saying here is that Chubb historically, in their</p> <p>12 personal lines division, had not used Credit Based</p> <p>13 Insurance Scores, but ACE had, and so Lamont is</p> <p>14 suggesting that upon completion of the merger, the</p> <p>15 ACE folks who are in charge of their risk</p> <p>16 department may influence Chubb to use the Credit</p> <p>17 Based Insurance Scoring solutions in their book of</p> <p>18 business.</p> <p>19 Q. And why did you respond in the</p> <p>20 middle of the page an e-mail, it looks like, to</p> <p>21 Russ dated July 1st, 2015, "Wow, not good"?</p> <p>22 A. Sure. So as best I can recall, you</p> <p>23 know, my concern would be that because Chubb was</p> <p>24 getting acquired by ACE, that you know, our</p> <p>Page 118</p>	<p>1 MSLA and states they have no assignment rights.</p> <p>2 The second results from the MLSA and defines</p> <p>3 Enterprise License. It's pretty restrictive and</p> <p>4 excludes Parent Company which is what I think ACE</p> <p>5 would be. The third is from the amendment when</p> <p>6 they picked up the ELA option. It provides some</p> <p>7 more flexibility as it relates to subsidiaries and</p> <p>8 affiliates, but not parent company," end quote.</p> <p>9 Now, you testified before when we</p> <p>10 first started here after lunch, you talked about</p> <p>11 in late 2015, your actions after learning of the</p> <p>12 proposed ACE acquisition of Chubb. And is this</p> <p>13 what you were -- does this reflect what you were</p> <p>14 talking about in terms of reviewing the license</p> <p>15 agreement so far as it relates to the assignment?</p> <p>16 A. Yes, I believe so. As I testified</p> <p>17 and as you can see here, my initial note is to</p> <p>18 Russ Schreiber. You previously asked me who would</p> <p>19 have directed me to do the analysis of the</p> <p>20 contract, and I answered Russ Schreiber. So based</p> <p>21 on Russ' request, this would have been my review</p> <p>22 of the contract to provide him with the</p> <p>23 information that I saw in the contract for him to</p> <p>24 interpret.</p> <p>Page 120</p>

<p>1 objections. I object to that it misstates 2 testimony. I object to the 3 mischaracterization of it, and I object to 4 the legal characterization of 10.8, and I 5 object to the witness being asked for a legal 6 characterization.</p> <p>7 A. So in my interpretation of this, 8 Chubb had the duty to seek and get FICO's written 9 consent for an assignment. They failed to do so. 10 So at no point were we ever able to have a 11 discussion with the client, being Chubb in this 12 case, around their intended use of the product 13 going forward. So at the time when this event 14 occurred, the fact that no written consent was 15 provided for the assignment is what triggered, you 16 know, our action in sending that letter to Chubb 17 notifying them of the breach.</p> <p>18 Q. Okay. And I understand your 19 position, but with respect to this issue as to 20 whether Chubb actually had or engaged in an 21 expanded use of its FICO products, it's your 22 testimony that you're aware of no evidence that, 23 following the merger, it did so?</p> <p>24 MR. HINDERAKER: Objection to the Page 133</p>	<p>1 to say Chubb.</p> <p>2 A. Yeah.</p> <p>3 Q. Chubb, yeah.</p> <p>4 A. For clarity, after the merger, I 5 had no evidence supplied to me that would indicate 6 that Chubb used the product in an expanded way.</p> <p>7 Q. Okay.</p> <p>8 A. But as I said, prior to the actual 9 transaction closing, I did have conversations with 10 representative -- with Henry Mirolyuz from Chubb 11 who had shared potential plans for it which caused 12 our concern under the contract.</p> <p>13 Q. So are there any e-mails going back 14 and forth between you and Henry Mirolyuz about the 15 planned post-merger activity?</p> <p>16 A. I am not certain. There is -- I do 17 remember one exchange I had with Henry -- whether 18 it was an e-mail or not, I am not certain -- 19 indicating that Accenture was a significant vendor 20 partner of ACE and would likely be involved in any 21 post-merger transformation projects or integration 22 projects, and Henry had inquired about our 23 experience partnering or working with Accenture, 24 but I couldn't be certain if that was an e-mail or Page 135</p>
<p>1 extent of the foundation.</p> <p>2 A. Yeah. I was not in a position to 3 know what was happening inside of the walls at 4 Chubb around discussions for using the platform. 5 Immediately following the conclusion of the 6 transaction, Chubb did not share any evidence with 7 us that would suggest that they planned to use the 8 scope -- the product in an expanded scope.</p> <p>9 Q. Okay.</p> <p>10 A. But lack of Chubb providing 11 evidence does not substantiate the potential, and 12 we were asking for a discussion around their 13 planned use. My view on this is that you're 14 asking, again, for my interpretation on this. We 15 didn't even get to Section 2 because Section 1, we 16 never granted our rights for the assignment to 17 begin with.</p> <p>18 Q. Okay. But let's just deal right 19 now with the expanded use issue. Following the 20 merger, you agree that you are aware of no 21 evidence that FICO engaged in more expansive use 22 of the FICO products as compared to the use of 23 which it was making before the merger?</p> <p>24 MR. HINDERAKER: I think you meant Page 134</p>	<p>1 a side conversation that Henry and I had.</p> <p>2 Q. Okay. Other than that discussion 3 or possible e-mail, are you aware of any other 4 e-mails going back and forth between you and Henry 5 Mirolyuz relating to planned activities by FICO 6 post-merger?</p> <p>7 MR. HINDERAKER: I object to the 8 question as saying any other e-mails. 9 Misstates the testimony.</p> <p>10 Q. Go ahead.</p> <p>11 A. I am -- I cannot recall any other 12 communications between me and Henry on the topic.</p> <p>13 Q. Okay. Now, going back to 14 Section 10.8 and the language relating to where it 15 says, in the middle of that paragraph, "which 16 shall not be unreasonably withheld," do you -- 17 what is it that you understand is meant by that, 18 and specifically, what is it that you understand 19 will not be unreasonably withheld?</p> <p>20 A. Right. So my interpretation of 21 this is that when FICO licenses their software, 22 they license it for a specific scope of use, which 23 is driven by a number of parameters in our pricing 24 model. And so my interpretation of this language Page 136</p>